

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 625 Disposition of Human Remains

**SPONSOR(S):** Health & Human Services Access Subcommittee; Roberson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Mathieson	Schoolfield
2) Community & Military Affairs Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The disposition of human remains in Florida is regulated pursuant to Part II, of ch. 406, F.S. This part of Florida Statute provides authority to the Anatomical Board of the State of Florida (Board), to collect and distribute human remains for medical education and research.

House Bill 625 provides the following:

- A newly created definition section, s. 406.49, F.S., for Part II, of ch. 406, F.S.;
- The Board shall be notified of unclaimed human remains;
- For a funeral director licensed under ch. 497, F.S., to become a legally authorized person, to authorize arterial embalming, and transfer unclaimed remains to the Board, without liability;
- Clarification regarding the transfer of eligible veterans, or spouses or dependents of veterans of the uniformed services of the United States, or National Guard, to national cemeteries.
- Authority for boards of county commissioners to develop policies for the final disposition of unclaimed remains and indigent remains;
- That the Board shall be notified at least three business days before, and approve a conveyance of human remains into, or out of the state by designated entities;
- Criteria for the Board to evaluate requests to convey human remains;
- The removal of the sunset provision related to notification of the Board by entities accredited by the American Association of Museums;
- That non-anatomical donation organizations be accredited by the American Association of Tissue Banks (AATB) to convey human remains within, into or out of the state;
- That the Board can be a donee for the purposes of anatomical gifts under ch. 765, F.S.; and
- Repeal of s. 406.54, F.S. related to bodies claimed after delivery to the anatomical board

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Regulation of the conveyance of anatomical remains

Part II, of chapter 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of such bodies to the Anatomical Board (Board),<sup>1</sup> and then from the Board to Florida medical and dental schools, teaching hospitals, medical institutions and health related teaching programs that require the use of anatomical material for study.<sup>2</sup> The Board is authorized to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to them.<sup>3</sup> In addition to this, the Board is permitted to contract and is to be annually audited by the Department of Financial Services (DFS).<sup>4</sup>

The Board is located at the University of Florida College of Medicine Health Science Center.<sup>5</sup> The Board is comprised of representatives from the medical schools in the state.<sup>6</sup> The Board's purpose is to provide cadavers and parts thereof, to teaching and research programs in Florida. The Board must hold a body for at least 48 hours once it has been received, before it can be used for medical science.<sup>7</sup>

Section 406.56, F.S., provides the Board with the authority to accept a body that has been donated to it through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in Part V, of chapter 765, F.S. This chapter of law outlines the specific process for donation, and requires that someone who wishes to donate their body for transplant or anatomical study memorialize their intent; by signing an organ donor card, registering with the online donor database or completing an advance directive or other document.<sup>8</sup> This is to protect donor intent and consent to use of their body.

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.<sup>9</sup> In addition to this, the transmission or conveyance of such anatomical remains outside the state is also a first degree misdemeanor.<sup>10</sup> However, there is a statutory exception for recognized Florida medical or dental schools which allows them to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the Board.<sup>11</sup> There is an exception for an entity that is accredited by the American Association of Museums (AAM) to convey, in specific circumstances to convey plastinated anatomical remains into and out of the state for exhibition purposes.<sup>12</sup> This exception sunsets on January 1, 2012.<sup>13</sup>

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<sup>1</sup> S. 406.50, F.S.

<sup>2</sup> The Board, is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. S. 406.57, F.S.

<sup>3</sup> S. 406.58, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

<sup>6</sup> [www.med.ufl.edu/anatbd/](http://www.med.ufl.edu/anatbd/) site last visited December 12, 2011.

<sup>7</sup> S. 406.52, F.S.

<sup>8</sup> S. 765.514, F.S.

<sup>9</sup> S. 406.61(1), F.S.,

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> S. 406.61(2), F.S.

<sup>13</sup> S. 406.61(3), F.S.

### Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.<sup>14</sup>

### The American Association of Tissue Banks

The AATB is an organization that promulgates industry standards and accredits tissue banks in both the U.S. and Canada.<sup>15</sup> Membership is voluntary, and the initial accreditation fee is \$3,000, with an annual fee charged to the tissue bank that is determined by volume and ranges from \$3,250 - \$75,000.<sup>16</sup> AATB requires onsite inspections every three years.<sup>17</sup> Currently, the AATB is developing an accreditation standard for non-transplant anatomical donation organizations, this is expected to be ready in January 2012.<sup>18</sup>

## **Effect of Proposed Changes**

### Section One – Definitions

HB 625 creates s. 406.49, F.S., which will operate as the definition section for part II, of ch. 406, F.S. The bill provides a definition of unclaimed remains. The bill transfers the definition of the “Anatomical Board” and “indigent person” from existing sections of ch. 406, F.S., and provides that “cremated remains”, “final disposition”, “human remains”, “remains” and “legally authorized person” have the same meaning as s. 497.005, F.S.<sup>19</sup> Conforming changes are made throughout ch. 406, F.S., to change “disposition” to “final disposition.”

### Section Two – Unclaimed Remains Disposition

This section of the bill amends s. 406.50, F.S., directing any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, is to notify the Board, unless:

- The remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease (which is existing law);
- A legally authorized person objects to the use of the remains for medical education or research;
- or
- The deceased person was a veteran, or the spouse or dependent child of a veteran of the uniformed services of the United States or National Guard, and eligible for burial in a national cemetery.

The bill has removed the notification exception for death by crushing. This is because crushed remains likely have limited utility in an educational setting.

The bill clarifies existing law requiring a determination of a veteran’s eligibility for burial in a national cemetery, pursuant to 38 C.F.R. s. 38.620.

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<sup>14</sup> See e.g., [www.nih.gov/news/health/oct2010/nhgri-07.htm](http://www.nih.gov/news/health/oct2010/nhgri-07.htm), site last accessed December 20, 2011. (Here a federal grant has been awarded to understand how genetic variation interacts with disease); [www.iiam.org/researcherArticles.php](http://www.iiam.org/researcherArticles.php), site last accessed December 20, 2011 (This is the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research).

<sup>15</sup> Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practice. [www.aatb.org/About-AATB](http://www.aatb.org/About-AATB) site last visited December 12, 2011.

<sup>16</sup> AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with House Health and Human Services Access Subcommittee, 12/9/11. There are currently 12 organizations in Florida that are accredited by the AATB. [www.aatb.org/index.asp?bid=15](http://www.aatb.org/index.asp?bid=15) site last visited December 12, 2011.

<sup>17</sup> Email from AATB, on file with House Health and Human Services Access Subcommittee, December 29, 2011.

<sup>18</sup> *Id.*

<sup>19</sup> S. 497.005, F.S., operates as the definition section for the Funeral, Cemetery and Consumer Services chapter of the Florida Statutes.

The bill provides for a funeral director licensed under ch. 497, F.S., to assume responsibility of a legally authorized person for unclaimed remains, when no family exists. After 24 hours from the time of death, the funeral director may authorize arterial embalming to transfer the unclaimed remains to the Board. The bill releases a funeral director from liability for damages, when acting in accordance with this subsection.

The bill provides that if the identity of the unclaimed remains cannot be ascertained, the person or entity in control of them may not:

- Cremate them;
- Donate them as an anatomical gift;
- Be buried at sea; or
- Removed from the state.

If the Board does not accept unclaimed remains, the county in which the remains are discovered or where the death occurred, is authorized to dispose of the entire remains. The authority is given for disposition of the “entire” remains. It is unclear from the bill what happens if the unclaimed remains are not in their entirety, or within what timeframe they must be in their entirety to be buried or cremated.

The bill also provides authority to county boards of commissioners to, by ordinance or resolution, develop policies and procedures for the final disposition of unclaimed remains.

The bill repeals existing law related to competing claims for the same unclaimed remains by legally authorized persons. Precedence for competing claims to direct disposition of remains is provided for in s. 497.005, F.S.

#### Section Three – Disposition of Unclaimed Deceased Veterans

This section of the bill provides conforming changes to include the term final disposition, and updates a reference to the federal regulation for burial eligibility in a national cemetery.

#### Section Four - Retention of Human Remains Before Use; Claim after Delivery to Anatomical Board; Procedures for Unclaimed Remains or Remains of an Indigent Person

The bill substantially rewords s. 406.52, F.S., which relates to the retention of human remains, and a process for reclaiming the remains from the Board. The following changes to current law are made:

- At any point prior to the transfer to medical education or research, a legally authorized person may reclaim the remains from the Board, after payment of the Board’s expenses incurred for transporting, embalming and storing the remains.
- The Board is authorized to reject indigent remains for any reason.
- The bill authorizes county boards of commissioners to, by ordinance or resolution, bury or cremate such remains in their entirety.
- The bill relieves funeral directors licensed under ch. 497, F.S., from liability for burying or cremating these remains, at the written direction of the county boards of commissioners.

The bill repeals previously enacted portions of s. 406.52, F.S., including deeming county commissioners to be legally authorized persons for the purpose of retention of human remains, and that if contact is made with a relative of the deceased person, the relative’s preference for final disposition is to be taken into account.

#### Section Five - Unclaimed Remains of Indigent Person; Exemption from Notice to the Anatomical Board

Section 406.53, F.S., is substantially reworded by the bill. The following changes to current law are made:

- Notification of the Board at the death of an indigent by counties is changed by removing the following exceptions:
  - Death caused by crushing injuries;
  - Remains with contagious diseases;

- Claims for final disposition at the expense of a friend or representative of a charitable organization or religious entity that the indigent person was a member of; or a governmental entity that provided residential care and will provide for final disposition at its expense.
- The bill adds new exception to notification of the Board which is for bodies mutilated by wounds and for notifications already made and certified by funeral directors.
- The bill also removes current law in s. 406.53, F.S., which directs the Department of Health (DOH) to collect burial fees for remains identified as their clients.<sup>20</sup>

#### Section Six - Contracts for Delivery of Human Remains after Death Prohibited

The bill amends s. 406.55, F.S., changing the word “body” to “human remains” and provides rewording of existing statute.

#### Section Seven - Acceptance of Human Remains under Will

Section 406.56, F.S., is amended to change “medical science” to “medical education and research” and to reword existing statute.

#### Section Eight - Distribution of Human Remains

The bill amends s. 406.57, F.S., allowing accredited colleges of mortuary science, rather than recognized associations of licensed embalmers or funeral directors, to be loaned remains for education or research purposes. This would allow the schools to directly access remains for such purposes.

#### Section Nine - Fees; Authority to Accept Additional Funds; Annual Audit

The bill eliminates associations and leaves institutions as the source of fees to be collected by the Board. The bill also narrows the Board’s ability to reimburse people for the delivery of remains, to that of funeral directors licensed under ch. 497, F.S.

#### Section Ten - Institutions Receiving Human Remains

This section contains rewording of existing statute and removes associations from the list of entities allowed to receive human remains.

#### Section Eleven - Disposition of Human Remains after Use

This section amends s. 406.60, F.S., which limits the disposal of human remains by either the board, or a cinerator facility licensed under ch. 497, F.S., when such remains are deemed no longer of value to medical or dental education or research.

#### Section Twelve - Selling, Buying, Bartering, or Conveying Human Remains Outside or within the State Prohibited; Exceptions; Penalty

The bill expands the prohibition on selling buying or conveying human remains outside the state to include bartering and all transactions within the state.

The bill limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. The current law is struck which limits conveyance to persons, institutions or organization. The bill also expands medical research to include dental. The bill requires these organizations to give three business days notice to the Board prior to conveying human remains. From receipt of the request, the Board is given three business days to approve or deny, or it is deemed approved.

The bill requires specific information to be submitted to the Board by the organization seeking approval to convey human remains:

- Name, physical location and date of course, conference or seminar, of the facility receiving the remains or specimen(s) received;
- A description and intended use of the remains or specimen(s);

<sup>20</sup> DOH retains the capacity to assess fees for services, subject to s. 402.33, F.S.

- The name, physical address and telephone number of the organization or facility supplying the remains or specimen(s), and the organization handling the transfer;
- Documentation from legally authorized persons who make an anatomical gift pursuant to s. 765.512, F.S. If the body is to be segmented or disarticulated, the documentation is to specifically include legally authorized consent, and describe which body parts are to be segmented or disarticulated.
  - An exception to this requirement is made for the conveyance of specimens into the state by nontransplant anatomical donation organizations, which may provide an affidavit that states the organization has the donation and consent forms, and that no specimen has been received from a second party;
- An outline of the security measures for maintaining control and safeguarding the remains or specimen(s); and
- The disposal process for the remains or specimen(s), once the course, conference, seminar or facility has concluded their use.

The Board is directed to provide a written statement if it denies a request.

The bill also removes the sunset provision for the exemption from notification to the Board for entities accredited by the American Association of Museums.

Section 13 - Bodies may be Claimed after Delivery to the Anatomical Board

The bill repeals s. 406.54, F.S., which allowed human remains to be claimed from the Board by members of fraternal or religious entities, of which the person was a member.

Section 14 - Donees; Purposes for which Anatomical Gifts may be made

The Board is added to s. 765.513, F.S., as an entity that can become a donee for the purposes of anatomical gifts of whole bodies for medical or dental education or research.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 406.49, F.S., relating to definitions.
- Section 2:** Amends s. 406.50, F.S., relating to unclaimed remains; disposition, procedure.
- Section 3:** Amends s. 406.51, F.S., relating to final disposition of unclaimed deceased veterans; contract requirements.
- Section 4:** Amends s. 406.52, F.S., relating to retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains or remains of an indigent person.
- Section 5:** Amends s. 406.53, F.S., relating to unclaimed remains of indigent person; exemption from notice to the anatomical board.
- Section 6:** Amends s. 406.55, F.S., relating to contracts for delivery of human remains after death prohibited.
- Section 7:** Amends s. 406.56, F.S., relating to acceptance of human remains under will.
- Section 8:** Amends s. 406.57, F.S., relating to distribution of human remains.
- Section 9:** Amends s. 406.58, F.S., relating to fees; authority to accept additional funds; annual audit.
- Section 10:** Amends s. 406.59, F.S., relating to institutions receiving human remains.
- Section 11:** Amends s. 406.60, F.S., relating to disposition of human remains after use.
- Section 12:** Amends s. 406.61, F.S., relating to selling, buying, bartering, or conveying human remains outside or within the state prohibited; exceptions; penalty.
- Section 13:** Repeals s. 406.54, F.S., relating to bodies may be claimed after delivery to the anatomical board.
- Section 14:** Amends s. 765.513, F.S., relating to donees; purposes for which anatomical gifts may be made.
- Section 15:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a direct impact on the private sector. Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is \$3,000 initially, and then between \$3,250 and \$75,000 annually.<sup>21</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>21</sup> Email from AATB, on file with House Health and Human Services Access Subcommittee, December 29, 2011.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Health and Human Services Access Subcommittee adopted 2 amendments to HB 625:

Amendment 1 provides that the Board may embalm remains upon receipt of them.

Amendment 2 provides criteria for the Board to use when evaluating a request to convey remains or specimen(s):

- Name, physical location and date of course, conference or seminar, of the facility receiving the remains or specimen(s) received;
- A description and intended use of the remains or specimen(s);
- The name, physical address and telephone number of the organization or facility supplying the remains or specimen(s), and the organization handling the transfer;
- Documentation pursuant to s. 406.61(2)(b), F.S. An exception is made for the conveyance of specimens into the state by nontransplant anatomical donation organizations, which may provide an affidavit that states the organization has the donation and consent forms, and that no specimen has been received from a second party;
- An outline of the security measures for maintaining control and safeguarding the remains or specimen(s); and
- The disposal process for the remains or specimen(s), once the course, conference, seminar or facility has concluded their use.

The amendment also clarified that an organization must apply three business days prior to conveyance, and the Board has three business days to approve or deny the request. If the Board does not act within three business days, the request is deemed approved. The Board must also provide a written statement with a denial.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.